

§ 1952.165

the Mississippi and Missouri Rivers between Iowa and other States; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in “agricultural employment” within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Iowa retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

(c) Iowa is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

[50 FR 27243, July 2, 1985, as amended at 62 FR 2561, Jan. 17, 1997; 65 FR 36622, June 9, 2000]

§ 1952.165 Level of Federal enforcement.

(a) As a result of the Assistant Secretary’s determination granting final approval of the Iowa plan under section 18(e) of the Act, effective July 2, 1985, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Iowa plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under section 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, inves-

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tigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Iowa plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification), as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments; Federal government-owned, contractor-operated military/munitions facilities; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other States. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary’s Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in §1952.164(b). Federal OSHA will also retain authority for coverage of all Federal government employers and employees; and of the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Iowa State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resump-

tion of Federal enforcement, and/or proceedings for withdrawal of plan approval.

[50 FR 27243, July 2, 1985, as amended at 62 FR 2561, Jan. 17, 1997; 65 FR 36622, June 9, 2000]

§ 1952.166 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, City Center Square, 1100 Main Street, Suite 800, Kansas City, Missouri 64105; and

Office of the Commissioner, Iowa Division of Labor, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

[65 FR 36622, June 9, 2000]

§ 1952.167 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Iowa's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(2) [Reserved]

(b) *Temporary labor camps/field sanitation.* Effective February 3, 1997, the Assistant Secretary approved Iowa's plan amendment, dated August 2, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities). The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Iowa pursuant to Secretary of Labor's Order 5-96, dated December 27, 1996.

[59 FR 14555, Mar. 29, 1994, as amended at 62 FR 2561, Jan. 17, 1997]